



September 6, 2002

Mr. James L. Dougherty, Jr.
Cole & Dougherty
5120 Bayard
Houston, Texas 77006

OR2002-5000

Dear Mr. Dougherty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168220.

The West University Place Police Department (the "department"), which you represent, received a request for the entire investigation file of a case relating to the requestor's client, identified as case number 01-P-0637. You state that the department has provided some information to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information at issue is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this case, you inform us that the complainant has declined to press charges. Furthermore, the documents reflect that the district attorney has refused criminal charges in this case pursuant to the complainant's decision and that the department has closed the investigation. Therefore, we determine that the information at issue pertains to an investigation that has concluded in a final result other than conviction or deferred adjudication and we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531

S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. You have submitted copies of the documents you have released as basic information. We note, however, that the documents do not include a detailed description of the offense, which is basic information under *Houston Chronicle*. *Id.* Thus, you must release a detailed description of the offense to the requestor. Furthermore, basic information also includes the identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). Since you have released the complainant's age as part of the identification and description of the complainant, you may in this instance withhold the complainant's date of birth under section 552.108. With the exception of basic information, including a detailed description of the offense, you may withhold the remainder of the requested information from disclosure based on section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

¹ Because we are able to make a determination under section 552.108, we do not reach your arguments under sections 552.101 and 552.115 of the Government Code.

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 168220

Enc: Submitted documents

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